

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Creation of a)	
Low Power Radio Service)	MM Docket No. 99-25
)	

COMMENTS OF
PROMETHEUS RADIO PROJECT

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I. Introduction and Summary

Prometheus Radio Project is pleased to participate in this *Fourth Further Notice of Proposed Rule Making* in the low power radio docket,¹ as we move closer to implementing the important objectives of the Local Community Radio Act (“LCRA”). The Commission has before it some of the most important decisions in this docket to fulfill the mandate of Congress and the potential of the low power FM (LPFM) service. We are pleased to see the Commission’s focus on the LCRA’s “core goals of localism and diversity” and the creation of a more sustainable community radio service. Adherence to these goals will fulfill the promise of the low power radio service as originally envisioned by the Commission when it created this service over twelve years ago.

Increasing Availability of LPFM Frequencies and Participation in the Upcoming Filing Window

Most important among our recommendations is that the Commission adopt a simple and flexible second-adjacent channel waiver standard. Without such a standard, the Commission will be thwarting the intent of Congress in explicitly endorsing second-adjacent waivers for low power radio stations in Section 3(b)(2) of the LCRA and Congress' expectation that LPFM opportunities in urban areas would be substantially increased. We estimate that without these waivers, opportunities for low power radio stations will be cut in half in the top 150 markets. Congress made clear it expected the Commission to draw on the existing standards applicable to translator stations and should treat both kinds of stations equally for the purposes of obtaining second-adjacent waivers.

¹ Creation of a Low Power Radio Service, MM Docket 99-25, Fifth Report & Order, Fourth Notice of Proposed Rulemaking, Fourth Order on Reconsideration (rel. March 29, 2012) (FCC 12-28) (“*Fourth NPRM*”).

In addition to the technical questions the Commission must address in this proceeding are critically important practical process decisions that will dictate the success of the application windows themselves. In this regard, Prometheus requests that the Commission:

- Adopt a short form/long form filing process similar to those used in auctions, deferring complex technical filings until after a tentative selectee is chosen;
- Give applicants at least six months, and preferably nine months, between the final rules for the next application window and the start of the first window; and
- Adopt multiple filing windows similar to those adopted in 2000-2001, giving particular consideration to REC Networks proposal for two filing windows of contiguous states.

Each of these proposals will improve the efficiency of the process on the whole, save the Commission tremendous resources, reduce burdens on low power radio stations and the general broadcasting community, and enhance participation by underserved groups who are the intended beneficiaries of the low power radio service.

Implementation of LCRA's Interference and Technical Provisions

Second-adjacent stations. In addition to adopting second adjacent waiver standards for LPFM applicants that are identical to translator waiver standards, Prometheus explains that LPFMs should be treated like translators in other areas as well to conform to the LCRA. Therefore, the Commission should treat LPFM applicants and stations similarly with respect to utilizing variations in wattage and directional antennas in applications and for addressing interference complaints once they begin operating.

Third-adjacent stations. We believe the Commission has put forward sound proposals for handling interference for LPFM stations operating on third-adjacent channels, consistent with the clear directives of the LCRA. We support the adoption of two interference regimes for those stations subject to the interference procedures laid out in the LCRA and those subject to the Commission's existing interference rules. Prometheus largely concurs with the Commission's proposal for how to address predicted interference to translator input signals.

Locally Originated Programming and Improved Point System

Prometheus strongly supports a minimum 20-hour per week locally-originated programming obligation for all low power radio stations. This obligation is necessary to fulfill the promise of the low power radio service as a medium that promotes local programming and serves local niche communities. It is justified by evidence that not only are approximately 20 percent of existing LPFM stations offering little to no local programming, but that local programming is even scarcer on the airwaves than when the FCC first created the service in 2000. Such a decision would be consistent with a line of Commission decisions narrowing and clarifying that LPFM stations are not to be used as translators, simply repeating other programming.

Prometheus believes the current point system should be maintained with some modifications. We suggest that the Commission should retain the established community presence criterion in its current form. If the Commission does not adopt a mandatory minimum of locally-originated programming, we strongly endorse a locally-originated programming criterion receiving at least two points, if not more. Prometheus does not support the consortium criterion as proposed, and proposes to eliminate the proposed 12-hours daily operation point. We also offer an alternate process by which to award points -- a waterfall system which would allow the Commission to prioritize some points over others during the evaluation process and create more opportunities for clear winners in the competitive process.

New Classes of Service

Rather than eliminating the LP10 service, Prometheus proposes that the Commission consider adopting an LP50 service, which would better achieve the Commission's objectives in creating the LP10 service in the first place--to squeeze in small stations where they can fit but

retain adequate functionality for a small station. Prometheus supports the Commission's proposal to increase the power of the current and future LP100 stations to 250 watts, particularly given the LCRA's focus on parity between translators. Prometheus believes that upgrades to higher power should not occur until after the upcoming application window is complete to ensure that we maximize the number of possible LPFMs before increasing their size.

Other Eligibility, Ownership, and Point System Questions

Prometheus agrees that applicants that certify they are local at the time of application must continue to be eligible throughout their license term. Prometheus believes that limited cross-ownership of LPFM stations and translators could be beneficial, if LPFM stations were limited to one or two translators and the translators were subject to the same eligibility limits at LPFM stations and were required to obtain their signals over the air. Prometheus supports policies to promote Tribal ownership of LPFM stations.

II. Application Filing Windows and Procedures

A. The Commission Should Adopt a Two-Part LPFM Application Process Similar to the Translator Short Form/Long Form Process.

Prometheus has consistently asked the Commission to consider the needs of underserved communities in designing and implementing LPFM application procedures. Along with a number of other public interest organizations, Prometheus has highlighted the need for grassroots community groups to have sufficient time for decision-making, coalition-building, and fundraising in order to participate as new entrants.² Furthermore, Prometheus has raised concerns

² See e.g. Prometheus et al, September 6, 2011, MM Docket No. 99-25, a sign-on letter from more than thirty national and local public interest organizations: "While we share the Commission's interest in a timely filing window, we urge Commission staff to ensure adequate

about the shortage of affordable and qualified consulting engineers needed to complete applications for all applicants, particularly without sufficient lead time and without multiple filing windows.³

This final concern is particularly urgent with the Congressional authorization of second adjacent channel waivers. The initial LPFM filing windows in 2000-2001 used simple spacing rules for station allocations. Most applications required no technical attachments, and were often prepared without professional engineering assistance. The next filing window(s) are likely to be very different. Most of the applications will require technical exhibits that normally are prepared by engineering professionals. If the final rules allow, a significant majority of the applications will need to include exhibits justifying requests for second-adjacent spacing waivers based on contour protection, undesired/desired ratio and population calculations, and/or directional antennas. While any applicant contemplating using any of these non-spacing-matrix-based methods should seek technical assistance early-on, a significant portion of the time and cost involved is in the formal preparation of the exhibits.

The burden imposed by thousands of LPFM applications requiring complex engineering exhibits will be significant. For grassroots groups, finding a qualified engineer able to produce the necessary showings at an affordable rate will be a challenge, as very few engineers who specialize in this type of allocations offer discounted services to noncommercial applicants. Hasty or unqualified showings will result in a greater processing burden for the Commission. Yet far worse is the impact on applicants, who will pay two or three thousand dollars for engineering consultations whether or not they eventually receive a license. Given the high demand in many

time for community groups to prepare. Grassroots community groups will need ample time to organize and raise funds for engineering studies once the rules for LPFM are published.”

³ See Prometheus Radio Project, United Church of Christ, Future of Music Coalition, September 6, 2011, MM Docket No. 99-25, at 6.

urban areas, we anticipate that many, if not most, applicants will pay the engineering costs for second adjacent waiver analysis without getting licensed.

For these reasons, Prometheus proposes an alternative application procedure, modeled after the Short Form/Long Form application process used by FM translators, and similar to the application process employed in § 309(j) competitive auctions for mutually exclusive accepted applications for initial licenses. This procedure would ease the financial burden on applicants at the early stages of the process, while also streamlining FCC processing of the applications and weeding out applicants unable or unwilling to complete the process. As the Commission explained when it proposed—and ultimately adopted—a Short Form/Long Form system in the competitive auction context, this application method can “reduce the administrative burdens of the initial stages of the auction process, avoid unnecessary delay in the availability of service, and encourage applicants to participate in the process.”⁴

The Short Form would look substantially similar to the original LPFM applications, including all information other than the second adjacent waiver showing, with all the basic technical, legal, and point-system data and certifications. For those not requesting waivers, the Short Form would be the entire application. Point system claims and supporting documents all must be complete and sufficient as of the initial filing. Included on the form would be check boxes for those applicants requesting processing using second-adjacent waivers. To encourage thoroughness by applicants at the time of initial filing, we propose the inclusion of an additional check box in which applicants requesting processing by second-adjacent waiver must certify that

⁴ *Implementation of Section 309(j) of the Communications Act Competitive Bidding*, Notice of Proposed Rule Making, PP Dkt. No. 93-253, 8 FCC Rcd. 7635, 7651 (1993) *see Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Second Report & Order, PP Dkt. No. 93-253, 9 FCC Rcd. 2348, 2375–76 (1994).

the necessary calculations have been completed, and that those calculations indicate that a second-adjacent waiver should be grantable at the proposed transmitter site.

During processing, the Commission would first determine which applicants would be grantable as singletons with the proper exhibits, and announce a deadline for filing Long Forms containing all the exhibits. The grantable Long Forms for singletons would then be designated as Accepted for Filing. Those applicants that fail to file Long Forms would be quickly dismissed.

Those applicants who are mutually exclusive with other applicants would be afforded a settlement period. Any settlement agreement would need to be accompanied with Long Forms to be filed by all participating applicants. At some point (not less than sixty days later), all applicants that wish to remain “alive” in the process would need to file Long Forms, even if a settlement had not been reached by that time. Those applicants who can extricate their application from the MX group with a minor-change technical solution would also need to do so by this deadline with a Long Form. All MX applicants who fail to file a Long Form by the deadline would be dismissed. The remaining applicants would be free to continue to attempt to fashion a Universal Settlement with the remaining parties.

By using a Short Form/Long Form system, only those applicants who wish to continue the process after finding out their MX situation would need to file a Long Form. This would create a mechanism to weed out applicants who have lost interest but refuse to request dismissal, or (in the case of MX applicants) refuse to cooperate in any Universal Settlement. This has been a significant problem in the past decade. These uncooperative applicants have often stymied the completion of Universal Settlements, putting a greater burden on Commission staff. A hard deadline should be set for Long Form applications, even in the absence of a voluntary settlement. Those who fail to file timely Long Forms should quickly be dismissed.

To the extent that the community radio assistance groups and engineers can be freed of helping applicants prepare exhibits in the initial filing window(s), those same assistance groups and engineers can better help applicants in filing clean and accurate applications. Not only would this procedure reduce processing burden on consultants and Commission staff, it would be dramatically better for the public. In a mutually exclusive group of five applicants requiring complex waiver studies, the total application cost for all groups might exceed ten thousand dollars, yet can result in only one grantable application. By limiting the cost of expensive engineering showings to those groups who prevail in the application process, the Short Form/Long Form system would facilitate participation by a wider diversity of organizations and communities. This in turn increases the benefit of the LPFM service more broadly.

B. Adequate Time, Notice and Capacity are of Equal Importance to the Commission's Technical Decisions in Ensuring Low Power Radio Fulfills Its Promise.

As Prometheus, the United Church of Christ, and the Future of Music Coalition explained in our comments last September in this docket, the pragmatic procedures surrounding applications for low power radio stations will be the simplest, but likely among the most important factors in determining whether the low power radio service fulfills its promise of serving underrepresented groups. Everything the Commission has done and will do to ensure adequate frequencies in our major cities to implement the Local Community Radio Act will be of little import if none of the beneficiaries can apply to use them. As the Commission repeatedly noted in the July 2011 *Further Notice*, this is likely to be the first and last opportunity for low-power radio stations in any urban area in the United States. We share the Commission's sense that the next LPFM window represents the "last best opportunity to create a vital and sustainable

community radio service in major metropolitan areas.”⁵ As we said in September, “[l]ow participation or a high rate of incorrectly completed applications will hinder the development of the service.”⁶

Thus, Prometheus reiterates our request that the Commission adopt a minimum of six months between adoption of the final rules governing frequencies and procedures of the upcoming window, and the opening of the first window. We note that the Commission’s Information Needs of Communities Report did not make many concrete recommendations for action by the Commission, but it *did* recommend the Commission, “make sure that licensing ‘windows’ are set up in such a way to give LPFMs a fair shot at getting traction throughout the nation.”⁷

We explained in detail in our prior comments the reasons why many non-profits who serve underserved communities require additional time to prepare.⁸ These reasons boil down to two factors:

- 1) Residents of most cities benefited by the LCRA still do not know where exactly frequencies will be available in their communities, and few non-profits will be able to take concrete action without more certainty that preparations are not in vain.
- 2) Virtually all of the non-profits that might be interested in applying for a low power radio station require substantial resources to assemble an application which cannot be expended until frequency availability is more certain.

Non-profit organizations working with the underserved communities that are among the primary targeted beneficiaries of the low power radio service fall into two groups—either they are larger, more established organizations with an existing mission and programming, or, they are smaller

⁵ *Fourth Further Notice of Proposed Rulemaking* at ¶26

⁶ See Comments of Prometheus Radio Project, United Church of Christ, and Future of Music Coalition at 4 (filed Sept. 6, 2011).

⁷ Steven Waldman, FCC, *The Information Needs of Communities* 16 (Jul. 2011) [hereinafter *INOC Report*] at 357.

⁸ Comments of Prometheus Radio Project, et al. at 3-7 (filed Sept. 6, 2011).

groups more focused on the use of community media and specifically low power radio, to serve social justice or other ends. For larger groups, they require adequate time to plan budgets, allocate resources, consult with constituencies, adopt board resolutions and complete other governance matters necessary to become a licensee. Smaller groups, on the other hand, necessarily act with fewer resources, so while they might be able to respond more nimbly than a long-established group, they will have fewer volunteers, staff and other resources to dedicate to completing an application. Neither of these groups has the ability to waste resources preparing for a LPFM application if no suitable frequency is available. Yet, despite the good work of the Commission in moving forward and resolving the many complicated technical questions in this docket, it is still unclear for many potential applicants whether they can apply for a suitable frequency. It would be a waste of precious resources for applicants to put much energy into an LPFM application until the likelihood of frequency availability is more clear. Moreover, the best low power radio stations will be some form of collaboration between a variety of groups in any given community—even if the collaboration is limited to an offer of one organization’s roof to host another’s antenna. These types of agreements take time. Negotiations of these agreements cannot begin in earnest until the Commission issues its final order resolving the questions set forth in the *Fourth Further Notice*.

Thus, Prometheus Radio Project requests, on behalf of the many underserved communities who hope to benefit from passage of the LCRA, that the Commission open its first filing window no sooner than six months after adoption of final rules.

C. The Commission Should Adopt Multiple Filing Windows.

For the same reasons we propose a short form/long form process and adequate time between final rules and the opening of filing windows, we request the Commission utilize

multiple filing windows as it did during the first filing LPFM application period in 2000-2001. During 2000-2001, the Commission used five applicant windows, spread over the country. The Commission laid out projected filing dates at the beginning of the process and then announced the precise dates of the filing window 30 days in advance.⁹ The entire process was not announced until two months before the first filing window.

These applicant windows permitted the scarce resources of experienced broadcast engineers and lawyers to be spread more reasonably among all applicants, resulting in better applications for the Commission to review. Filers in early windows enabled later applicants to learn from their experiences. It enabled national organizations supporting applicants to focus geographically, resulting in more efficient use of resources.

Although we understand from informal conversation with Commission staff that multiple filing windows may be a concern due to potential inequities among mutually exclusive applicants filing in different states, we note that the REC Networks proposal minimizes such inequity.¹⁰ The proposal divides the country into two filing groups of contiguous states, avoiding the often-used Mississippi River as a dividing line due to populous cities along the river. By using only two windows composed of groups of contiguous states, this proposal dramatically limits the inequities of the first LPFM filing windows. The Commission should adopt multiple filing windows—if not the five from 2000-2001, at least the two windows proposed by REC Networks.

⁹ FCC Lottery Today Determines Order for Accepting Applications for Low Power FM Radio Station Licenses, FCC Press Release (March 27, 2000).

¹⁰ See Comments of REC Networks, MM Docket 99-25, at 17, 19 (filed Sept. 27, 2011).

III. Changes to Technical Rules Required by the LCRA

A. Waiver of Second-Adjacent Channel Minimum Distance Separation Requirements

1. The Commission Should Make Second-Adjacent Channel Waivers as Simple and Accessible as Possible for LPFM Applicants.

a. Without a Simple and Flexible Second-Adjacent Channel Waiver Standard, Many Urban Areas Will Not Benefit from LPFM.

The LCRA directs the Commission to make LPFM licenses available based on the needs of the local community. In spectrum crowded markets where demand for LPFM is greatest, few LPFM opportunities will exist without the use of second adjacent channel waivers. We estimate that within the Top 150 markets, the number of frequencies available to LPFM could increase by more than 100% assuming a simple second adjacent waiver standard.¹¹ Given the need for second adjacent waivers to facilitate LPFM licensing in the most populous regions in the country, the Commission should make such waivers as available as possible.

b. Congress Has Directed the Commission to Create a Second Adjacent Waiver Standard for LPFM that is Substantially Identical to the Rules Used to Allocate FM Translators.

In Section 3b(2) of the LCRA, Section 3b(2)(A) outlines a standard by which waivers may be granted, and 3b(2)(B) specifies the manner in which the Commission must address complaints

¹¹ To calculate this estimate, we used the Commission's Fortran software program to assess LPFM availability with and without second adjacent channel spacing restrictions in the 30x30 grid over the center of each top-150 Arbitron market. In "Spectrum Limited" markets, we ignored translators. In "Appendix B" markets, in which the Commission employed a 20x20 grid rather than the 30x30 grid, we did the same. Our estimate is inexact because of several inconsistencies in the data, and because the option to ignore translators in the Commission software ignores not only translator applications likely to be dismissed but also existing translators, which must be protected. Also, not all stations which could be allocated without second adjacent channel spacing protections would receive a second adjacent channel waiver in real world conditions.

of interference. Both parts clearly refer to existing translator rules when directing the Commission to set a standard for LPFM.

Section 3b(2)(A) states that the Commission “may grant a waiver of the second-adjacent channel distance separation requirement to low-power FM stations that establish, using methods of predicted interference taking into account all relevant factors, including terrain-sensitive propagation models, that their proposed operations will not result in interference to any authorized radio service.”¹² This language directly authorizes a departure from the minimum distance separations methodology historically used in allocating LPFM stations in favor of the contour-based methodology available to FM translator applicants and other radio services on the second adjacent frequency. To apply for second adjacent frequencies, translator applicants are permitted to use terrain-sensitive propagation models to demonstrate that their stations will not cause interference to other stations.¹³ These models allow FM translator applicants to specify the predicted signal contour for the proposed station to demonstrate that this contour will not overlap the signal contours of other authorized radio services. When there is an overlap, applicants are permitted to demonstrate that no actual interference will occur in the area of predicted interference, for example because the area is unpopulated or over water.

Section 3b(2)(B) states that a low power FM station that has received a waiver is required to suspend operations upon notification that it is causing interference to the reception of a full-service station, and may not resume operations, aside from short test transmissions, until the interference has been eliminated. This language sets out a framework for interference complaints that is clearly modeled on the translator interference rules in 74.1203.

¹² See Local Community Radio Act, Pub. L. No. 111-371, 124 Stat. 4072 (2011), § 3(b)(2)(a).

¹³ For FM translators, this standard also applies to third adjacent frequencies. Congress has directed the Commission to eliminate rather than waive third adjacent minimum distance separations for low power FM stations. LCRA, § 3(a).

Read together, both parts of Section 3b(2) set out a second adjacent waiver standard substantially identical to the Commission's rules allocating translators on the second adjacent frequency.

As the LCRA sets out a standard similar to that for translator applicants, LPFM applicants should be permitted to make the sort of showings routinely accepted from translator applicants. Under the rules in 74.1204(d), translators may use the undesired/desired ratio calculation to demonstrate that no actual interference may occur, despite some area of prohibited overlap, by submitting evidence that the area of predicted interference occurs over water or in an unpopulated area.¹⁴ In many cases, perhaps in most cases, urban LPFM applicants will need the benefit of this standard in order to demonstrate that their proposed stations will not cause interference.

c. Beyond a Showing of Non-Interference as Required by the Statute, No Other Showing Should Be Required for LPFM Applicants Seeking Waivers.

The Commission asks what other factors should be taken into account and what other showings should be required of applicants requesting second adjacent channel waivers.¹⁵ In particular, the Commission asks if it should take into account whether the proposal would eliminate or reduce interference received by the LPFM applicant, whether there are fully spaced channels available, whether the proposal would avoid a short-spacing on a third-adjacent channel, and whether the proposal would result in superior spacings on co and first adjacent frequencies.

None of these factors should be required for second adjacent channel waiver showings. There are no technical reasons to further raise the waiver standard beyond that directed by

¹⁴ 47 CFR § 74.1204(d)

¹⁵ Fourth NPRM at ¶18-19.

Congress. As noted in the NPRM, the Commission “routinely” accepts similar showings of non-interference from translator applicants without recourse to the additional showings raised by the Commission. Furthermore, translators regularly operate at higher power and height than LPFM stations. Exacerbating the existing disparity between LPFM and translators by requiring LPFMs to produce a host of unnecessary showings would violate the LCRA’s prescription that the two services be considered “equal in status.” Unnecessarily raising the bar for LPFM applicants to participate is also harmful to the Commission’s own goal to license LPFM as broadly as possible.

Regardless of whether other LPFM channels are available, the Commission should permit every LPFM applicant the flexibility to determine when a second adjacent channel waiver is the most viable option for the proposed station. Even if a fully spaced channel is available at the same location, often that frequency may receive more interference than an alternative short-spaced channel.¹⁶ To best ensure a viable LPFM service, the Commission should permit applicants the greatest flexibility possible in selecting their frequencies.

c. The Commission Should Allow LPFM applicants Applying with Second Adjacent Frequency Waivers the Flexibility to Lower Wattage and Use Directional Antennas.

LP100 stations today are required to operate with facilities at least 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers.¹⁷ Stations applying for second adjacent channel waivers should have the flexibility to lower their power beyond this to avoid causing interference to neighboring stations. By

¹⁶ The REC Networks LPFM Channel Search tool (cdbs.recnet.net:8080/lpfm.php) and the simplified “zip code search” version on the Prometheus website (<http://prometheusradio.org/zipcodecheck>) include this scenario as one of several possible user results. “Fully spaced channels receiving interference and second adjacent waiver channels only” is the result for 6,196 zip codes nationwide.

¹⁷ 47 CFR § 73.811.

reducing their power, stations can reduce the area of potential interference and avoid predicted overlap with nearby stations.¹⁸ This will be a particularly important tool for applicants using an undesired/desired signal strength ratio to define areas of potential interference. The ability to lower power is one reason that FM translators licensing is more flexible than that of LPFM. Prometheus urges the Commission to address this inequity by providing community groups the option to lower power when needed.

The Commission did not authorize directional antennas at the inception of the LPFM service because this measure was seen as unnecessary when using a minimum distance separation methodology. The Commission also noted that the lack of directional antennas would simplify applicant requirements and facilitate application processing.¹⁹ Even with the introduction of the non-spacing methods, however, many LPFMs will not require directional antennas, due to the relatively small interference contour of an LPFM station. We do not therefore predict a large processing burden on Commission staff, as applicants will not likely choose a more expensive directional antenna unless necessary. However, some stations will require a directional antenna to receive waivers at their proposed sites, as a directional antenna could enable an applicant to clear the protected contour of a second adjacent station, or prevent interference over population that might exist in some direction. LPFM stations who do require directional antennas should have the same flexibility as other radio services.

¹⁸ Elsewhere in these comments, Prometheus proposes a 50 watt LPFM service. If the Commission adopts this proposal, wattage for LP100s to lower power below 50 watts would be a lesser concern.

¹⁹ *First Report and Order* at ¶ 108.

2. The Commission Should Handle Interference Complaints Against LPFM Stations Operating on Second Adjacent Frequency Waivers in a Manner Similar to that of Translators.

The Commission requests comment on the interference framework laid out in Section 3(b)(2)(B) of the LCRA. In particular, the Commission asks whether and how to define a *bona fide* interference complaint that would trigger the obligations therein. The complaint mechanism previously in place for LPFM stations and still in place for translators operating on second adjacent frequencies is most reasonable. A *bona fide* complaint that can trigger the interference remediation in Section 3(b)(2)(B) of the LCRA should be in the form of an affidavit, stating the nature and location of the alleged second adjacent channel interference. The affidavit should include the complainant's name and address, location(s) at which interference occurs, and a statement that the listener is, in fact, an economically disinterested listener of the affected station. The complaint must involve a fixed receiver, and must be received by either the LPFM or full power station within one year of the date on which the LPFM commenced broadcasts with its currently authorized facilities. The complaint should be served on the LPFM licensee and the Commission, attention Audio Services Division. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that will demonstrably eliminate the interference or does not reasonably cooperate with the LPFM station's remedial efforts, the complaint should be considered resolved, and the licensee of the LPFM station should be absolved of further responsibility for the complaint.

B. Third-Adjacent Channel Interference Complaints and Remediation

1. Prometheus Concurs with the Commission's Conclusion that in Sections 7(1) and 7(3) of the LCRA Congress has Created Two Distinct Interference Protection and Remediation Regimes.

The Commission seeks comment on Section 7 of the LCRA, which addresses third-adjacent channel interference complaints and remediation. Prometheus largely concurs with the Commission's interpretation of Section 7. Prometheus agrees that in Sections 7(1) and 7(3) of the LCRA, Congress has created two distinct interference protection and remediation regimes. Prometheus also concurs that Sections 7(1-5) apply only to third-adjacent channel interference.

Section 7(3) refers to stations fully spaced on the third adjacent frequency. 7(4) and 7(5) apply only to these "Section 7(3) stations." Prometheus supports the Commission proposal to establish basic requirements for interference complaints addressed in Section 7(3). Complainants should be required to file copies of informal complaints with the Audio Division, listing the call signs of the LPFM and affected station, the complainant's contact information, the receiver type, and the location and date of interference. A 7(3) station should be relieved of their obligations to cooperate in addressing interference complaints when the complainant does not reasonably cooperate with the LPFM station's remedial efforts.

2. LPFM Applicants Should Have Flexible Options to Address the Potential for Predicted Interference to Translator Input Signals on Third-Adjacent Channels.

In the *Fourth Further Notice*, the Commission proposes a system to ensure that LPFMs do not interfere with third-adjacent full power stations where those stations are used as inputs to

nearby translators, a requirement of Section 6 of the LCRA.²⁰ Under the Commission's proposal, each FM translator has a “potential interference area” comprised of the region within 2 km of the translator site as well as that within 10 km and between +30 and -30 degrees of the azimuth from the station being rebroadcast to the associated translator site. If an LPFM application is within the potential interference area of a translator and the translator is rebroadcasting an off-air signal from a channel third-adjacent to the LPFM's proposed channel, then the LPFM applicant must demonstrate non-interference to the input signal at the translator site through one of two methods. In the first method, the applicant shows “that the ratio of the signal strength of the LPFM (undesired) proposal to the signal strength of the FM (desired) desired station is below 34 dB at all locations.” In the second method, the applicant uses the “Mitre Formula” to show that it will not cause any actual interference to the input signal at the translator site.²¹

The Mitre Formula requires knowing the gain of the translator's receiving antenna in both the direction of the proposed LPFM and the direction of the input station. This information is not available in the FCC's Consolidated Data Base System (CDBS), so the Commission proposes allowing “the use of a 'typical' pattern in situations where an LPFM applicant is not able to obtain information from the translator licensee, despite reasonable efforts to do so.” Prometheus supports this proposal. We also note that many translator records do not specify the delivery method or the input signal. As of April 23, 2012, the “delivery_method” field was blank in 1,596 of the 14,358 CDBS translator records (over 10%). Furthermore, when the delivery method was specified as off-air (either from the primary station or from another translator), in 857 records there was no indication of the primary station or the input channel. In light of this lack of information, Prometheus proposes that if the LPFM applicant cannot determine the delivery

²⁰ *Fourth NPRM* at ¶45.

²¹ *Fourth Further Notice*, ¶42-45

method or input channel for a translator despite reasonable efforts to do so, the applicant is not required to afford special protections to that translator's input signal. Alternately, the Commission might require all translator FM stations to update their records by a certain deadline prior to the LPFM licensing window. LPFM stations would not be required to protect the input signals of translator stations that fail to update their records with the necessary information.

Additionally, there may be cases where there are viable alternatives for preventing interference to a translator input signal, even if a third-adjacent LPFM does not pass the 34 dB test or the Mitre test. For example, the translator licensee may already be using a strong band-pass filter on the input signals that can effectively block any third-adjacent interference. In other cases, the LPFM applicant may be willing to cover the cost of purchasing and installing an alternative delivery mechanism such as a satellite or microwave system, where permitted by FCC rules. Prometheus proposes that as an alternative to showing non-interference with the 34 dB test or the Mitre test, an LPFM applicant may submit with their application a letter signed by the translator licensee stating that the applicant and the licensee have agreed to an alternative technical solution.

Finally, this process should only be applicable to translators receiving full power FM station signals. While many translators also receive their input via another translator, the input signals that come from translators are by law equal in status with LPFM signals. Translators are not required to protect LPFM signals on third-adjacent channels, and so LPFMs should not be required to protect third-adjacent translator signals.

IV. Other Rule Changes

A. Classes of Service

1. Rather than Eliminating the LP10 Class, the Commission Should Upgrade to an LP50 Class.

- a. There is Widespread Need for LPFM in Urban Areas that Will be Unmet by LP100 stations.

The Commission has found that it is “axiomatic that community groups and niche audiences are more plentiful in larger, more densely populated markets and, therefore, that there is a need for greater numbers of LPFM stations in such markets.”²² However, many urban areas lack sufficient spectrum for LP100 licensing, even with the removal of third adjacent protections and the waiving of second adjacent protections. In the intervening years since the 2000-2001 LPFM licensing windows, full power station move-ins and the FM translator Auction 83 have reduced already limited spectrum in urban areas.

Along with REC Networks and Common Frequency, Prometheus proposes a new 50-watt service as a variant on the long-dormant LP10. The creation of an LP50 service could substantially increase LPFM licensing opportunities in major markets, allowing urban communities to benefit from community radio. According to a study conducted by REC Networks, the number of LPFM opportunities in the top ten Arbitron markets would go from 90 to 193, with an average increase of 10 available frequencies per market.²³ These numbers are based on the Commission’s 30x30 minute grid; a study of LPFM availability within city limits of these markets would likely demonstrate more dramatic increases in availability.

²² *Third Further Notice* ¶25

²³ Comments of REC Networks, MM Dckt 99-25, filed May 7, 2012, Appendix B. Data refers to LPFM opportunities within the Commission’s 30 x30 grid and includes second-adjacent frequencies.

b. The LCRA Directs the Commission to Make LPFM Licenses Based on the Needs of the Community without Reference to the Class of Service.

In the *Fourth Report and Order*, the Commission adopts an interpretation of Section 5 of the LCRA first advanced in the *Third Further Notice*. Among other principles related to the balancing of LPFM and translators, the Commission finds: “Read together with Section 5(2), Section 5(1) requires the Commission to provide licensing opportunities for both services in *as many local communities as possible*...”²⁴ Elsewhere, the Commission repeatedly emphasizes the LCRA’s concern (and the Commission’s own) with creating new LPFM licensing opportunities in spectrum-limited markets.²⁵

Neither the LCRA nor the Commission’s interpretation specify the class of LPFM stations that must be created through such urban licensing opportunities. Indeed, this non-specificity as to station class allows the Commission freedom to develop an LP250 service, as proposed in the *Fourth Further Notice*. Rather, the focus in both the statute and the interpretation is on the needs of local communities and the creation of opportunities in as many communities as possible.

Prometheus commends the Commission for its clear commitment to the creation of LPFM opportunities in spectrum-limited markets. For communities which will not have adequate LP100 channel availability, however, the Commission is obligated to develop other licensing opportunities. Under its own interpretation of the LCRA, the Commission must make licenses

²⁴ originally *Third Further Notice* at ¶7, cited in *Fourth Report and Order* at ¶5 and adopted at ¶18. Emphasis added.

²⁵ See, e.g., *Fourth Report and Order* at ¶19 (“Thus, our principal challenge in effectuating the mandates of Sections 5(1) and 5(2) is to identify and preserve LPFM licensing opportunities where few or no LPFM stations currently operate.”); *Fourth Report and Order* at ¶2 (“...the next LPFM window presents a critical, and indeed possibly a last, opportunity to nurture and promote a community radio service that can respond to unmet listener needs and underserved communities in many urban areas.”).

available in as many communities as possible. An LP50 service would allow an LPFM service where LP100 stations are not possible.

c. Although an LP10 Class of Service Could Be Viable in Sufficiently Dense Urban Areas, an LP50 Class Would More Effectively Meet Community Needs.

Although an LP10 class of service could be viable in sufficiently dense urban areas, an LP50 class would more effectively meet community needs. LP50 would operate at a maximum of 0.05kW at 30 m height above average terrain (HAAT), with a maximum service contour of 4.7 km. In comparison, LP10 had a service contour of 3.2 km and LP100 has a service contour of 5.6 km. Like LP10 stations, LP50 stations would be permitted to operate at a minimum of one watt.

Just as the Commission modified the LP100 spacing table to propose an LP250 service, the LP10 spacing table can be modified to create an LP50 service. Using the same distance separations on co- and first-adjacent full-serve separations as the existing LP10 service will maintain a buffer zone between the interference contour of the LP50 station and the service contour of the full service station. In the same manner that the Commission has proposed for the LP250 service, the minimum distance separations for stations operating on second adjacent channels, FM translators, other LPFMs, channel 6 TV stations, and foreign facilities would be adjusted to reflect the increased service contour of an LP50 station.²⁶

At 3.2 km, the service contour for LP10, an LP50 station would be able to provide a field strength of 67 dbU, in comparison to the 60 dbU field strength of LP10. This additional field strength will improve indoor listening when compared to an LP10 facility at the same distance. REC Networks has shown that some LP50 stations in urban areas could reach more than 900,000

²⁶ See Comments of REC Networks, MM Dck 99-25, filed May 7, 2012, Appendix A, for a proposed LP50 Spacing Table

listeners and a considerable number of LP50-available sites could reach populations exceed 250,000.²⁷ In other words, LP50 stations in urban areas have the potential to serve audiences larger than those served by existing LP100s. LP50 represents a viable option for urban community radio in locations where LP100 opportunities do not exist.

d. The Creation of an LP50 Service is a Logical Outgrowth of this Proceeding.

The Commission has considered various classes of service in the development of LPFM, including a 10-watt class, a 1-watt class, and a 1,000 watt class, as well as the LP100 and LP250 classes.²⁸ In the present *Further Notice*, the Commission proposes to eliminate the previously adopted LP10 service. The Commission does not offer a reason for this proposal, beyond noting that the Commission has licensed only LP100 class facilities to date.²⁹ Presumably, the Commission believes that LP10 is not as beneficial to the public interest as the LP100 service, due to the latter's superior coverage and penetration. Throughout this proceeding, however, the Commission has weighed the balance between the technical advantages of higher power and the increased diversity to be found in a smaller radio service.³⁰ LP50 would represent a compromise between the technical superiority of LP100 and greater availability of LP10. This middle path would address the Commission's statutory mandate to create as many licensing opportunities as possible without jeopardizing the equally important goal of technically viable stations that can meet local community need.

²⁷ See data at REC Networks Supercoordinator 2012, <http://cdbs.recnet.net:8080/super.php>

²⁸ *First Report & Order* at ¶7

²⁹ *Fourth Further Notice* at ¶48

³⁰ *e.g.* First Report and Order at ¶12, in the decision not to license LP1000 stations: "Moreover, LP1000 stations could have a significant preclusive effect on the licensing of LP100 and LP10 stations. Yet, these lower powered stations will permit many more opportunities for community-oriented service than would 1000-watt stations."

2. The Commission Should Allow Both Rural and Urban LPFM Applicants and Existing LPFM Stations to Raise Their Power Levels to 250 Watts as a Minor Modification Immediately Following an LPFM Licensing Window.

a. Increasing the Maximum Power Level for LPFM Stations Does Not Undermine the LCRA.

The Commission asks whether an increase in the maximum LPFM power level can be implemented in a manner that would not undermine the LCRA. As previously discussed, the LCRA requires the Commission to expand licensing opportunities and does not reference class of service. Although the Commission suggests that the LCRA’s protection standards and interference remediation procedures are “presumably grounded on the current LPFM maximum power level,” the Commission correctly argues that by maintaining or increasing spacing requirements, modifying the maximum power level does not undermine the LCRA aim to protect full power service.³¹

b. Increased Power Will Enable Both Rural and Urban LPFM Stations to Better Serve the Needs of Local Communities.

The Commission observes that in proposing an increase to the maximum operating power for rural LPFM stations, the Amherst Alliance and the Catholic Radio Association “focus on the particular challenges of maintaining economically viable LPFM stations in rural areas where population densities are low and larger coverage areas are possible.”³² Prometheus agrees. We have heard from a number of rural stations that the inability to reach listeners in areas of low population is the primary issue that can be addressed with regulatory relief.

In urban areas, however, LPFM stations will face different challenges, and a higher wattage will be needed for different reasons. In spectrum crowded markets, community groups

³¹ *Fourth Further Notice* at ¶51

³² *Fourth Further Notice* at ¶49

are less likely to have access to their ideal transmitter locations to serve unique and geographically localized communities. A higher maximum power will enable such a station to better reach its target audience, even if its chosen transmitter location is unavailable or its community is spread across several neighborhoods. Furthermore, stations operating with second adjacent channel waivers will need to prove a lack of population around the LPFM transmitter site, which may require these stations to broadcast at distances farther away from listening community. Finally, higher wattage will also enable urban LPFM stations to counteract incoming interference from full power stations. In some cases, LPFMs will experience greater interference than predicted by spacing, due to grandfathered stations operating at higher power or stations on mountaintops.

c. Although Temporary Geographic Restrictions on LP250 Could Help Protect LP100 Opportunities, After a Filing Window LP250 Should Be Allowed Everywhere As a Minor Modification.

The Commission proposes geographic restrictions for higher powered LPFM operations, specifying a range of distances from city center coordinates based on market rank and alternately proposing a prohibition in the top 50 markets.³³ As previously noted, urban as well as rural communities have a strong need for LP250. With relatively few LPFM frequencies remaining in urban areas, however, the Commission must balance flexibility for individual applicants with promoting diversity of LPFM licensing opportunities. In several top markets, the licensing of 250-watt LPFM stations could limit the total number of LPFM opportunities in those cities. In Seattle, for example, the inclusion of LP250 at the initial licensing stage could reduce the number of opportunities from 20 LP100s to 13 (either LP100 or LP250) stations.³⁴ Even with the

³³ *Fourth Further Notice at ¶51*

³⁴ See Comments of REC Networks, Dckt 99-25, filed May 7, 2012, at Appendix D, REC Supercoordinator 2012 Summary Potential for LPFM in Spectrum Limited Metro Markets.

Commission's proposed geographic restrictions, LP250 licensing would bring the number of opportunities down to 17. In the Chicago market, the eight LP100 opportunities would be reduced to just two LP100 opportunities and three LP250 opportunities. In that case, even the Commission's proposed geographic restrictions would bring the number of opportunities down by one. As these examples indicate, licensing urban LP250 during the filing window precludes some LP100 opportunities.

Although restricting licensing of 250 watt LPFMs by Arbitron market ranking and distance from city center would help increase the number of urban LP100 or LP50 opportunities, such a restriction is an unnecessarily blunt instrument. Restricting higher wattage LPFMs geographically would needlessly limit many LPFM operators in meeting the needs of their communities. Rather than setting permanent geographic limits on LP250 stations, Prometheus proposes that the Commission employ such limits only prior to an LPFM licensing window. Following the LPFM window, the Commission should permit existing LP100 licensees and future LP100 construction permit holders to upgrade as a minor modification, regardless of location. This would ensure that applicants for 100 watt LPFM stations are not precluded by LP250s, and would avoid unnecessary geographic restrictions.

In some cases, power increase applications from LP100 construction permit holders and/or licensees might be mutually exclusive. To preemptively address this situation, the Commission might restrict power increases to those stations who meet minimum separations from other LPFMs large enough to allow both stations to increase their power without mutual exclusivity. In cases where that spacing is not met, stations could have an opportunity to revise their proposals or change frequencies.

Under this proposal, existing stations could increase their power immediately if they are outside urban areas, and all stations could upgrade following the next LPFM licensing window, as long as their power increase applications would not conflict with pending applications. New LPFMs would be eligible to increase power upon receipt of construction permit, allowing groups to plan for higher power when building their stations. This proposal to postpone LP250 licensing until immediately following the window would maintain maximum licensing of LP100 stations while permitting all LPFM broadcasters to upgrade power if room.

d. Restricting Eligibility for Power Increases to Already Licensed LPFMs is Unwarranted and Unnecessarily Limiting to Fledgling Stations.

The Commission asks whether eligibility for power increases should be limited to previously licensed LPFM facilities, “in order to provide those LPFM licensees that have demonstrated their ability to construct and operate a limited opportunity to expand their listenership.”³⁵ While Prometheus supports waiting until after the next filing window is complete to permit upgrades to LP250 status, we do not support any further waiting period or proving grounds to limit which stations may upgrade. Such a limitation is inconsistent with Commission policy for other radio services and unwarranted in the case of LPFM. FM translators are licensed with a maximum power of 250 watts at significantly greater height above average terrain with no prior proof of viability. To best ensure that the upcoming licensing window will create a robust urban LPFM service, the Commission should not withhold from new entrants any flexibility that might facilitate their successful operations. Rather, the Commission should use all the tools at its disposal to promote the success of fledgling LPFM licensees.

e. Stations Operating on Second Adjacent Waivers Should be Eligible for Power Increases to 250 Watts.

³⁵ *Fourth Further Notice at* ¶51

The Commission asks if eligibility to increase power to 250 watts should be limited to only those stations that can fully satisfy co-, first-, and second-adjacent channel spacing requirements.³⁶ Fully satisfying co- and first-adjacent requirements is a requirement of the LCRA,³⁷ without reference to station class or power level. Similarly, the LCRA authorizes second adjacent waivers without reference to station class. It therefore seems reasonable to assume that the intent of Congress, in regard to LP250 as well as other station classes, is to disallow short spacing on co- and first-adjacent frequencies and to permit second adjacent waivers. Prometheus advocates for the use of second adjacent waivers for all classes of LPFM service.

B. Removal of I.F. Channel Minimum Distance Separation Requirements

1. The Commission Should Remove I.F. Channel Minimum Distance Separation Requirements for LPFM stations Operating at 100 watts or Less, Not Stations Operating At Less Than 100 Watts.

The Commission seeks comment on its proposal to remove intermediate frequency (IF) protection requirements for LPFM stations operating with less than 100 watts, in recognition of the disparity between translators and LPFM on this point.³⁸ Prometheus supports this measure, but proposes to expand the rule to include LPFM stations operating at “100 watts or less” rather than “less than 100 watts.” The difference in potential I.F. interference for 99 watt versus 100 watt LPFM stations is negligible, but the practical impact of this distinction on LPFM licensing is not. Most LPFM stations are licensed at 100 watts, rendering these stations ineligible for the increased flexibility this rule would provide. Expanded to include these stations, the

³⁶ *Fourth Further Notice at ¶51*

³⁷ LCRA, §3b1.

³⁸ *Fourth Further Notice at ¶52*

Commission's proposal to remove I.F. channel separation requirements would have a modest but real impact on LPFM availability in many markets.

C. Eligibility and Ownership

1. The Commission Should Adopt a Local Programming Obligation for New LPFM Stations.

As an alternative to placing greater emphasis on local programming as a selection criterion, the Commission asks if it should impose a specific requirement that all new LPFM licensees provide locally-originated programming.³⁹ Prometheus strongly supports a requirement that new LPFM licensees provide a minimum amount of local programming each week. Prometheus proposed such a requirement in the Commission's Future of Media proceeding, and the *Information Needs of Communities Report* created through that proceeding recommended that the Commission take up this question.⁴⁰ This policy change is justified in several ways. First, longstanding Commission policy, the creation of the low-power radio service, and the mandates of the Local Community Radio Act all support the establishment of local programming obligations. Second, local programming has faced a drastic decline over the past several years and is in a state of crisis today. Finally, in the absence of an obligation, a significant number of low-power stations fail to conform to the Commission's expectation that they will offer locally originated programming.

For these reasons, the Commission should institute a reasonable local programming requirement for low-power FM licensees of 20 daytime hours per week, tightly define local

³⁹ *Fourth Further Notice* at ¶62.

⁴⁰ See Comments of Prometheus Radio Project in the Matter of Future of Media and Information Needs of Communities in a Digital Ages, GN Docket 10-25, filed June 8, 2010, at 9 and *INOC Report* at 357.

programming, and require stations to publish online a list of locally originated programs. Such a requirement is justifiable under existing Commission policy and easily passes First Amendment muster.

a. Longstanding Commission Policy, the Creation of the Low Power Radio Service, and the Mandates of the Local Community Radio Act Support Local Programming Obligations.

The Commission has a strong justification, consistent with existing Commission policy and legislative intent, to create a local programming obligation. Not only has the Commission repeatedly emphasized the importance of localism in broadcast as a policy goal, but the history of the low power radio service and the mandates of the Local Community Radio Act explicitly support localism as a key Commission objective for low power radio.

Moreover, as Prometheus explained in our September 2011 comments, Section 5(2) of the Local Community Radio Act should be read as a localism mandate.⁴¹ We explained in significant detail the long history of localism in the Commission's policymaking and its importance for the low power service. These arguments apply with equal force to the Commission's decision with respect to an enhanced locally-originated programming obligation. In addition, "the concept of localism has been a cornerstone of broadcast regulation for decades."⁴² And as the Commission reiterated in the context of the 2010 quadrennial review of its media ownership rules, "We reaffirm our commitment to promote localism through our media ownership rules. At its core, localism policy is 'designed to ensure that each station treats the

⁴¹ See Comments of Prometheus Radio Project, et al., MM Docket 99-25, at 13-17 (filed Sept. 6, 2011)

⁴² *Broadcast Localism*, MB Docket No. 04-233, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, 1326, ¶ 3 (2008) [hereinafter *Broadcast Localism Report*].

significant needs and issues of the community that it is licensed to serve with the programming that it offers.”⁴³

When the Commission adopted its LPFM rules in 2000, it described the low power radio service as critically important for local communities, pointing to “broad interest in service from highly local radio stations strongly grounded in their communities” and concluding the new service would “enhance locally focused community-oriented radio broadcasting.”⁴⁴ The Commission granted applicants who promised to offer at least eight hours per day of locally-originated programming a preference point in any competition for licenses. It found that “local program origination can advance the Commission’s policy goal of addressing unmet needs for community oriented radio broadcasting,” and that “an applicant’s intent to provide locally originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression.”⁴⁵

Adoption of a locally-originated programming requirement would also be a natural progression of the Commission’s decisions to prohibit LPFMs operating as translators and to strengthen the locally-originated programming definition. From the start of the low power radio service, the Commission has emphasized that low power radio stations “should not be used for retransmitting, either terrestrially or via satellite, the programming of full-power stations” because such action would “undercut a fundamental basis for the establishment of this service.”⁴⁶ The Commission specifically pointed to this prohibition as a policy that would promote locally originated programming by “eliminating a significant avenue for obtaining non-

43 Quadrennial Review NPRM at ¶14 (citing Broadcast Localism Report, 23 FCC Rcd at 1327, ¶4).

44 *First Report and Order* at ¶3.

45 *First Report and Order* at ¶144

46 *First Report and Order* at ¶172

locally originated programming.”⁴⁷ In 2005, the Commission addressed the question again, clarifying:

that such programming [produced outside the 10 mile radius that does not involve local production facilities], including time-shifted programming obtained via satellite, may not be used to fulfill a locally originated programming pledge made as part of the mutually exclusive LPFM application selection process.⁴⁸

Again in November 2007, the Commission further refined its definition of local programming, noting that there was room for abuse. It found “repetitious automated programming does not meet the local origination requirement” meaning a program can “only ... be broadcast twice in order to meet the local origination requirement.”⁴⁹

Because the Commission has consistently emphasized an increased awareness that local programming is critical, in the context of LPFM as well as in other contexts, and because the Local Community Radio Act should be read as a localism mandate, a local programming requirement would be consistent with existing Commission policy and with the law.

b. The Need to Promote Local Programming Is Greater than Ever

The media landscape has shifted dramatically since the Commission first contemplated creating a low power radio service. Despite the explosion of online media, the sharp decline in newsroom staffing at newspapers and broadcast outlets over the past decade has not been addressed by new media. Low power radio is well positioned to play a bigger role in meeting the growing need for locally relevant media.

The Commission’s recent *Information Needs of Communities Report* highlighted the

⁴⁷ Id.

⁴⁸ Creation of a Low Power Radio Service, MM Docket 99-25, *Second Order on Reconsideration*, FCC05-75 at ¶10 (2005) (emphasis added).

⁴⁹ Creation of a Low Power Radio Service, MM docket 99-25, *Third Report & Order*, FCC 07-204, at ¶24 (2007).

decline in local news and other locally originated radio programming. The report cited the loss of all-news commercial radio, the decline of reporters in Black-oriented radio, and the absence of local news/talk programming.⁵⁰ The report's discussion of radio concluded, "[g]iven its origins as a fundamentally local medium, it is ironic that radio now excels at national programming."⁵¹ At the same time, experts interviewed for the report emphasized the importance of local radio, citing the popularity of all-news radio in the largest markets where it still exists, and the importance of radio, including low power radio, during emergencies.⁵²

The decline in local programming can be seen not only in news format stations, but also in music. In a 2006 study focused extensively on the music format of radio stations, the Future of Music Coalition demonstrated that national radio station groups use national trends to select their local music choices. Local music is less driven than ever by local culture.⁵³ FMC found that in many nationally-consolidated radio chains, "each [local] program director would only contribute 1.8 choices to the national pool of 133 songs, on average."⁵⁴ It highlighted two stations separated by geography and culture: WQRB and WRWD in Eau Claire, Wisconsin and Poughkeepsie, New York, respectively, which, despite having individual program directors, demonstrated a surprising 93 percent overlap in music content.⁵⁵

While local programming in broadcast is on a sharp decline, spectrum scarcity is also now greater than ever. Although the passage of the Local Community Radio Act will open up more FM spectrum for LPFM, the demand for urban LPFM licenses will be much greater than

⁵⁰ These findings are covered in greater detail in Section D(2)(a) below.

⁵¹ *INC Report* at 70.

⁵² *INC Report* at 65.

⁵³ Peter DiCola, *False Premises, False Promises*, Future of Music Coalition (December 2006) at 104-106.

⁵⁴ *Id.* at 106.

⁵⁵ *Id.* at 104.

the number of frequencies available. The majority of would-be LPFM applicants who contact Prometheus for information are based in urban markets with few LPFM openings expected. Given the expected scarcity, the Commission should ensure that licenses go to stations that truly serve their community with locally relevant and responsive programming.

The Commission's decision-making in the LPFM docket also should be further influenced by the changing situation outside of radio broadcasting: the increased need for spectrum for mobile wireless and broadband applications. At the Commission's urging, Congress just adopted groundbreaking spectrum incentive auction legislation,⁵⁶ based on the Commission's conclusion that we are facing a spectrum crisis.⁵⁷ Congress and the Commission are encouraging television broadcasters to voluntarily give up their spectrum in order to provide the scarce commodity to providers who require the versatility that the current television band offers. Unlike broadcast television, radio fully requires its current spectrum because it is mobile and its programming cannot be easily transitioned to distribution on cable networks. But at the same time that other broadcasters are being asked to give up their spectrum, it is important that radio spectrum is put to its best and highest use. And while some audiences that could be served through mobile data platforms, broadcast radio technology is dependent upon location and geographically based radio waves, making this medium most suitable for hyperlocal content -- precisely the content that the *INC Report* has found to be the least available on the Internet.⁵⁸

⁵⁶ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012).

⁵⁷ See, e.g., Chairman Julius Genachowski, *The World is Going Mobile*, Prepared Remarks, White House (April 6, 2011), available at: <http://www.fcc.gov/document/chairman-discusses-spectrum-needs-white-house-remarks>

⁵⁸ For example, the FCC's report, *The Information Needs of Communities (INOC Report)*, found that in Baltimore, despite a "profusion of media outlets" including blogs and websites, "95 percent of the stories—including those in the new media—were based on reporting done by traditional media." Steven Waldman, FCC, *The Information Needs of Communities* 16 (Jul. 2011) [hereinafter *INOC Report*]. *INOC Report* at 16.

Furthermore, many of the communities best served by low power radio—underserved audiences with low incomes, people of color, niche communities—are not yet online and are the most in need of the inexpensive solution that low power radio offers. As the Commission reexamines its spectrum allocations generally, it should make sure that the spectrum dedicated to broadcasting is serving its best and highest use, and that should include a local-programming requirement and enhanced rewards for local programming in excess of the minimum.

These national trends show that the local programming situation in 2000 was very different than it is today. This changing situation, and the availability of substantially more data than before, fully justify a Commission decision to impose a local programming obligation.

c. In the Absence of an Obligation, a Significant Number of Stations Fail to Conform to the Commission’s Expectation that They Will Offer Locally-Originated Programming

Despite the fact that it “believe[d] that LPFM licensees’ provision of a significant amount of locally originated programming will enhance the success of this service,” the Commission declined in 2000 to adopt a mandatory local programming requirement.⁵⁹ The Commission believed it had provided sufficient incentive through the local programming preference point, so “expressed an expectation . . . that a significant amount of programming for LPFM stations would be locally produced as a matter of course.”⁶⁰ But the Commission now has the benefit of ten years of experience with low power radio stations and important scholarship examining the LPFM service, demonstrating that this expectation was not met.

A recent study from 2009 demonstrates that while many low power radio stations do offer locally-originated programming, a significant minority do not. The telephone survey study, conducted by several scholars at Penn State University’s Annenberg School, demonstrates that

⁵⁹ *First Report and Order* at ¶168.

⁶⁰ *Id.* at ¶171.

approximately 20 percent of LPFM stations affiliate with national networks and provide little or no local programming.⁶¹ The study found, “The nearly 200 stations that affiliate with program providers [that] serve only as local distributors of otherwise non-local content are in every aspect...different from LPFM operators who do not belong to networks....”⁶² The study reported that most network-affiliated LPFM stations are members of six programming networks, several of which “simply disregard the [FCC’s localism] policy both in word and spirit and have used LPFM as a means to enhance their voices as national organizations and not as community operations.”⁶³

Although the study authors do not indicate whether the stations who participated in the survey had pledged to originate local programming, they vividly describe a large minority of LPFM stations that have neither the interest nor the operational capacity to originate programming. The study cites one licensee associated a national network: “All our programming’s by satellite, downloaded by satellite ... occasionally we’ll broadcast ... a recording of an event maybe that’s coming up in our church and that’s the only thing that we feed into it ourselves.”⁶⁴ In another example, the study reports that a board member of an LPFM station associated with a national network said that there was no community involvement in programming: “It’s complete download at this point, so if you want to say community involvement there’s some donations, there’s been some community work that’s gone into ... the set-up and maintenance of the station, but as far as programming goes we are complete download

⁶¹ Connolly-Ahern, *et al.*, “A Slice of the Pie: Examining the State of the Low Power FM Radio Service in 2009,” (37th Research Conference on Communication, Information and Internet Policy (TPRC)) (Sept. 27, 2009).

⁶² *Id.* at 26.

⁶³ *Id.* at 27.

⁶⁴ *Id.* at 21

at this time.⁶⁵” The operator of a station which received all programming from a national network described her duties as “not anything, really,” explaining that the station was housed “in a closet, it’s a very small 100 watt station...it pretty much runs itself...we do have to employ an engineer and he checks it once a week.”⁶⁶

The study concluded, “[t]he most significant problem that emerges from the network takeover of portions of the LPFM radio service is silencing of the very local voices – the voices of political activism, diversity, and even dissent – that were supposed to be strengthened by LPFM policy.”⁶⁷

Moreover, under current Commission policy, it is possible for stations pledging *no local programming* to sometimes win in competitive situations even when other stations do so pledge. This may occur even if the Commission awards two points for local programming rather than one. This outcome is of particular concern because the application process is much simpler and quicker for those who do not aspire to produce local programming, unavoidably favoring a larger number of applications from such applicants. An applicant who simply intends to carry network programming on a transmitter box in a closet can develop an application with far less effort than other groups. A non-collaborative radio project requires much less planning and organizing than those attempting to involve the community in the station programming plans.

The facts available to the Commission today indicate that, unfortunately, the Commission’s expert prediction in 2000 was not accurate. Thus a decision that each station must offer some locally-originated programming would be a logical next step. Nor would such a requirement constitute a rejection of the Commission’s observation that non-local programming

⁶⁵ Id at 23

⁶⁶ Id at 24

⁶⁷ Id.

can serve local community needs. Prometheus is not proposing the elimination of all non-local programming. However, the loss of local programming in the media landscape since 2000, the increased scarcity of spectrum, and the new evidence about LPFM itself all indicate that a renewed focus on local programming is appropriate. Prometheus is proposing that a significant percentage of the broadcast week—20 hours—be dedicated to the one programming element that was supposed to distinguish the low power radio service in the first place: locally-originated programming.

d. The Commission Should Institute a Reasonable Local Programming Requirement of 20 Daytime Hours Per Week, Tightly Define Local Programming, and Require Stations to Publish A List of Locally Originated Programs.

A local programming requirement of 20 daytime hours per week is reasonable. According to one site analyzing the first LPFM licensing windows, 81% of applicants pledged to originate local programming.⁶⁸ This indicates that the majority of LPFM licensees view eight hours a day of local programming as a manageable commitment. A weekly requirement of twenty hours is a lower standard than the existing pledge of eight hours per day (or 56 hours weekly); however, a somewhat lower standard is reasonable, given the move from an optional pledge to a requirement of eligibility. A weekly rather than daily standard also gives licensees the flexibility to broadcast local programming at times that are most convenient. For example, a student-run station might have more local programming on weekday afternoons and evenings, while a church station might primarily originate programming on Saturdays and Sundays.

We propose, however, that the twenty hours of local programming required by the Commission must be between the hours of seven a.m. and ten p.m., on any day of the week. We believe this fifteen-hour block is flexible enough to allow a variety of station formats to meet the

⁶⁸ See data available at <http://prfr.org/~bame/cdb/lpfm-scraped.dat>.

requirement. In the examples above, a student station might meet the requirement from five p.m. to ten p.m. on four days each week. The church station might meet the requirement with two hours of local programming each weekday morning and five hours on weekend mornings.

We also propose that the Commission more tightly define “local programming.” Although the Commission has clarified the definition of local programming over the years,⁶⁹ the explanation to date has left room for widely divergent interpretations. For example, some LPFM programmers interpret the definition to mean that programming may be considered local if it is broadcast no more than two times -- *per day*. In other words, a single four-hour block of automated musicprogramming, repeated twice daily, could meet the existing eight hours per day pledge. Prometheus does not believe this is consistent with the policy’s intent.

The following explanation of local programming is published on the website of Christian Community Broadcasters, one of the most active LPFM consulting organizations:

A live round-table discussion of local community and social issues is local programming. Unfortunately, many people believe this type programming - live and talk-oriented - is required. That is an incorrect assumption. Burn a CD containing a station ID and gather your favorite music CDs. Load into a CD player attached to your transmitter. Hit "random play" and you have met all FCC requirements for local programming. Unbelievable, but true. Some LPFM organizations pledged to air eight hours a day of locally produced programming. To keep that promise programs must be produced "within ten miles of the transmitter location." Loading a CD player or automation system is considered "production." A "song" is not a program; there is no requirement that individual songs must be locally written, performed, and recorded. Obviously covering a sporting event at a nearby high school or college is local. So is airing away games by community teams.⁷⁰

⁶⁹ See Creation of a Low Power Radio Service, MM Docket 99-25, *Second Order on Reconsideration*, FCC05-75 at ¶10 (2005) and Third Report and Order at ¶24 (2007)

⁷⁰ John Broomall, *FCC LPFM Regulations – Answers to Tough Questions*, Christian Community Broadcasters, <http://www.ccbroadcasters.com/fcc.htm>.

A few clarifications could go a long way to making the boundaries of the local programming rule more transparent. Further, to make public education and enforcement of the local programming obligation more simple, the Commission should require any LPFM stations with a web site to place a programming schedule online, noting which programs are intended to count towards the local programming requirement. Such an obligation would be consistent with the Commission's recent decision to require television broadcasters to place public files online,⁷¹ and the Commission's rules requiring television broadcasters to designate the programming that meets the children's television programming obligations.⁷² This online list of local programs could enable listeners to better engage with local stations around programming decisions and will enable improved public monitoring of the locally originated content obligation without relying on scarce Commission resources.

Small low-budget stations will easily be able to comply with this requirement, provided that they are not "one man band" stations primarily run by a single individual who operates in the name of a non-profit organization. Given the scarcity of licenses available, the Commission should set standards for LPFM high enough that one-person operations do not easily qualify. We believe the local programming requirement will help in this regard. We propose a six-month grace period after new stations are licensed to allow them to "ramp up" to full compliance.

Finally, such an obligation does not raise constitutional concerns. An obligation of this type is consistent with similar obligations imposed by the Commission and is consistent with the specialized nature of the low power radio service. Specifically, federal legislation, Commission

⁷¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, *Extension of the Filing Requirement For Children's Television Programming Report (FCC Form 398)*, MM Docket No. 00-44, Second Report and Order, April 27, 2012.

⁷² See 47 CFR §73.671.

decisions and Supreme Court precedent support the importance of local programming in broadcasting,⁷³ recognize that the Commission has ample discretion to implement the public interest standard in the Communications Act, including limits on use of network programming,⁷⁴ and support Commission actions to adopt content-neutral broadcaster obligations that embrace substantial broadcaster discretion.⁷⁵

2. We Agree with the Commission that Applicants Must Remain Local Rather than Being Local at the Time of Application.

The Commission seeks comment on whether it should clarify Section 73.853 of its rules to be sure that there is no question that low power radio licenses are reserved solely for non-profit, community-based entities.⁷⁶ We strongly support the Commission's proposal. It would controvert the LCRA and the policies of the Commission to permit applicants who are only local at time of application, but then later change to a non-local organization, to control LPFM licenses.

b. The Commission Should Adopt Measures to Support Broadcast Services for Indian Tribes.

Prometheus Radio Project strongly supports policies that will promote control by, and content serving Indian Tribes. Prometheus commented in favor of the Tribal Priority in the Rural Radio proceeding and emphasized that such policies rest on the inherent sovereignty of Indian Tribes.⁷⁷ Our initial reaction is to strongly support the Commission's proposals to assist Tribes in

⁷³ *Turner Broadcasting Co. v. FCC*, 512 U.S. 622 (1994).

⁷⁴ *National Broadcasting Co., Inc. v. United States*, 319 U.S. 190 (1943).

⁷⁵ See, e.g., *Policies and Rules Concerning Children's Television Programming*, 11 FCC Rcd 10,660 at 10,732 (1996).

⁷⁶ Fourth NPRM at ¶53.

⁷⁷ Comments of Prometheus Radio Project and National Federation of Community Broadcasters, MB Dkt. No. 09-52, filed July 13, 2009, at 13–14.

their acquisition of low power radio stations. However, because Prometheus is not an expert on many important details of the needs of Tribes, we are in consultation with organizations that more directly represent that constituency. If necessary, we will supplement our comments in this docket with a more detailed response to the Commission's proposals regarding Indian Tribes when we have completed our consultations with those organizations.

c. If Carefully Limited in Scope, Cross-Ownership of LPFM Stations and Translators Could Be Beneficial to the Public Interest.

The Commission seeks comment on whether to revise its rules to permit cross-ownership of an LPFM station and an FM translator or translators. If carefully implemented to preserve the character of LPFM service and the diversity of local airwaves, limited LPFM-translator cross-ownership would be beneficial to the public interest. The Commission's policies in this regard should be crafted to ensure that the translator rebroadcasts and enhances the mission of an LPFM station, rather than the reverse. Because the common owner of a translator and LPFM station would be subject to the more restrictive ownership eligibility rules of the LPFM service (e.g., non-profit status, local presence, and no other radio holdings), Prometheus is optimistic that with appropriate rules, the character of LPFM can be maintained. Prometheus proposes that LPFM stations be limited to one or two translator stations, further ensuring the local focus of the LPFM station. Some overlap of the 60 dBu contours of the cross-owned stations should be required, and the translator must rebroadcast the primary analog signal of the LPFM station.

The Commission asks whether LPFM stations should be permitted to use alternative signal delivery mechanisms to deliver signals to a commonly owned translator. They should not. Requiring LPFM stations to transmit their signals terrestrially offers another safeguard against the abuse seen elsewhere in the FM translator service.

D. Selection Among Mutually Exclusive Applicants

1. The Commission's Current Three-Point System for Determining License Allocation Among Mutually Exclusive Applicants Results in Many Suboptimal Time-Share Arrangements and Nonrenewable Successive Licenses⁷⁸

Under the Commission's current system for determining license allocation among mutually exclusive applicants, ties between two or more applicants are very common and lead to arrangements that are not ideal for the community. A major reason for these ties is that the Commission's points-based system for evaluating mutually exclusive LPFM applications examines only three selection criteria, weighted equally: (1) established community presence; (2) proposed operating hours; and (3) local program origination. A substantial number of applicants can satisfy all three selection criteria.⁷⁹ When two or more mutually exclusive applicants tie, the current system "[employs] voluntary time-sharing as a tie-breaker" and "as a last resort, where a tie is not resolved through time-sharing or settlement, . . . [the Commission] award[s] successive equal license terms totaling eight years[], without renewal expectancy for any of the licensees."⁸⁰ Tied applicants usually negotiate time-sharing agreements among themselves to avoid being awarded nonrenewable successive license terms, but from the public's perspective, it would be preferable if the selection process were better equipped to meaningfully distinguish among applicants. The public would be best served by a mutually exclusive application evaluation system that assigns each LPFM license to the best applicant(s) as early in the process as possible.

⁷⁸ Prometheus acknowledges the contributions of Georgetown Law students Ben Jacobs and Chuck Coughlin in the development of our comments in this section. We also wish to thank their supervisor, Graduate Teaching Fellow Laura Moy at the Georgetown Institute for Public Representation.

⁷⁹ See data available at <http://prfr.org/~bame/cdbs/lpfm-1.html>

⁸⁰ *Creation of Low Power Radio Service*, Report and Order, MM Dkt. No. 99-25, 15 FCC Rcd. 2205, at 2258–59 (2000) [hereinafter 2000 Report & Order].

Assigning each LPFM license to the applicant with the strongest demonstrable viability and commitment to the community would improve LPFM's sustainability, enhance licensees' incentives to succeed, minimize administratively unworkable time-sharing arrangements, facilitate responsive relationships between licensees and their communities of service, and provide more communities the opportunity to have LPFM stations that will last for many years to come.

To reduce the incidence of ties and reduce administrative burden by ensuring that licensees are selected as early in the application evaluation process as possible, Prometheus urges the Commission to modify the mutually exclusive applicant selection process. The Commission should retain the established community presence and local origination criteria, but should eliminate the preference for proposed operating hours. The Commission should adopt a preference point for stations pledging to originate local news as well as a point for stations pledging to maintain a staff presence, whether paid or unpaid, in a main studio capable of originating programming. Prometheus also proposes an alternative to the point-based evaluation system, a tiered evaluation process which would analyze mutually exclusive applications in "stages" to create more opportunities for a clear winner to emerge.

2. The Commission Should Retain the Established Community Presence, Eliminate the Operating Hours Criterion, and if No Local Origination Requirement is Adopted, Retain the Local Origination Criterion

The Commission should continue to consider applicants' local programming pledge and established community presence as selection criteria. These criteria provide an important baseline for selecting the applicant most likely to provide the best service to the community.

However, the operating hours evaluation criterion should be eliminated if the Commission mandates time-sharing for LPFM stations that do not operate at least 12 hours per day.

a. Retain the Local Programming Pledge Criterion

As discussed above in Section C(1), Prometheus strongly urges the Commission to promote local program origination from an evaluation criterion to a requirement for all new LPFM stations. The Commission has long emphasized the importance of promoting localism and diversity in the LPFM service, and locally originated programming advances both of these goals.⁸¹ In the event that the Commission declines to mandate local program origination, however, Prometheus urges it to afford the local programming pledge criterion greater weight. The alternative application evaluation system proposed by Prometheus below in Section 4 accomplishes this. But even if the Commission declines to adopt Prometheus's proposed evaluation system, it should, at a minimum, allow applicants to receive two or more points for a local programming pledge.

b. The Commission Should Retain the Two-Year Established Community Presence Criterion, Increasing the Limit from 10 to 20 miles in Both Rural and Urban Areas.

The Commission should continue to promote localism by providing a preference to LPFM applicants that show an established community presence of at least two years. As the Commission has recognized, the established community presence criterion preferences organizations with a "'track record' of community service and established constituencies within their communities."⁸² Equally important, it helps discourage non-local parties from establishing

⁸¹ See *Creation of a Low Power Radio Service*, Notice of Proposed Rule Making, MM Dkt. No. 99-25, 14 FCC Rcd. 2471 (1999) [hereinafter 1999 NPRM].

⁸² 2000 Report and Order, 15 FCC Rcd. at 2260.

new local organizations merely to maneuver for points before filing LPFM applications.⁸³ Established organizations are more likely to be attuned to, and have organizational experience addressing, the needs and interests of the community.⁸⁴

The established community presence criterion also plays important role as an indicator of an applicant's long-term viability. As the Commission has acknowledged, the upcoming "LPFM window presents a critical, and indeed possibly last, opportunity to . . . promote a community radio service."⁸⁵ By demonstrating that they have existed in the community for two years, applicants also demonstrate a desire and ability to engage with the community into the future.

As discussed above in section C(2), Prometheus agrees with the Commission that any group claiming the established community presence criterion should be held to an ongoing obligation to maintain that community presence. Prometheus also agrees with the Commission's proposal to extend the established community presence standard to 20 miles in rural areas.⁸⁶ Further, Prometheus recommends that the standard be extended to 20 miles in urban areas as well. Keeping the standard constant for both rural and urban areas will make this criterion easier to apply by eliminating any need for the Commission to determine whether the applicant is rural or urban. In addition, extending the standard to 20 miles in urban areas would avoid unfairly disadvantaging applicant organizations whose board members may live across a metropolitan area, but that perform the bulk of their work in one neighborhood.

Prometheus does not support the Commission's proposal to revise the definition of "established community presence" to require that applicants demonstrate four years of

⁸³ *Id.* at 2260–2261.

⁸⁴ *Id.* at 2260.

⁸⁵ *Creation of a Low Power Radio Service*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, MM Dkt. No. 99-25, ¶2 (Mar. 19, 2012) [hereinafter Fourth FNPRM].

⁸⁶ Fourth FNPRM *Id.* at ¶ 62.

community presence.⁸⁷ Nor does Prometheus support the alternative proposal to maintain the two-year threshold but also award an additional point to applicants that have a substantially longer established community presence.⁸⁸ A two-year presence is long enough to ensure that an organization has existed in the community prior to the licensing opportunity, and thus has a broader educational mission and hopefully a greater likelihood of long-term sustainability. Although Prometheus shares the goal of implementing more selective criteria to distinguish among applicants, no evidence suggests that an organization becomes significantly more responsive to the community after crossing a four-year threshold. Adjusting the presence threshold from two years to four years might also unnecessarily prejudice those new members of the community—such as recent immigrants or innovative new media organizations—who can demonstrate a significant connection to the community and would serve the public well as broadcasters.

c. The Commission Should Not Adopt the Consortium Criterion As Proposed.

The Commission seeks comment on whether to allow local organizations filing as consortia to receive one point under the established community presence criterion for each organization, and whether to cap the number of points awarded to consortia at three.⁸⁹ Although this change would make the point aggregation settlement process more transparent, Prometheus has a number of reservations about the practical impact of the idea as proposed. At this time, Prometheus does not support the consortia preference. In particular, we oppose a consortia preference in which the number of participating organizations is capped at three. In competitive markets, multiple consortia may be mutually exclusive applicants for a given channel. With a cap

⁸⁷ Fourth FNPRM at ¶ 62*Id.*

⁸⁸ Fourth FNPRM at ¶ 62*Id.*

⁸⁹ Fourth FNPRM at ¶ 62*Id.*

at three participating organizations, this arrangement is likely to create more ties. If the Commission abandons the point-aggregating process, then the number of involuntary timeshare arrangements will increase significantly. On the other hand, if the Commission continues to allow point aggregation through voluntary settlement, it is unclear how the consortia preference will improve upon existing rules. Although allowing greater diversity, timeshares among several groups which are themselves consortia of several groups seem less likely to result in sustainable radio stations than less involved arrangements. Yet if the FCC does not cap the number of points awarded for consortia participants, the number of participants in a timeshare will also increase, creating more unwieldy station arrangements. Furthermore, it is possible that the LPFM application process will become a contest favoring the best connected, best resourced groups in a given community, shutting out disenfranchised voices which the LPFM service is intended to serve.

Another aspect of the consortia preference that seems undesirable is the automatic elimination of applicants who do not participate. Under this proposed rule change, the outcome of contests between non-consortium applicants and consortium applicants would essentially be predetermined, ensuring that in competitive situations, applicants without prior consortium arrangements would be ineligible. Individual organizations competing against a consortium would almost always lose out, even if they satisfy more of the evaluation-criteria tied directly to localism and diversity, such as the local programming pledge, and even if the consortium members might have otherwise negotiated to include these organizations in a voluntary settlement. For example, a local arts organization and a homeless shelter might apply together as a consortium, but later discover that a nearby community college has applied as well. Under existing Commission rules, the two previously-acquainted groups might happily arrange a

voluntary settlement to include the community college, allowing student programmers to cover the overnight hours. Under the proposed rules, the community college would automatically lose as a non-participant in the consortium. Negotiation among groups previously unconnected becomes impossible.

Another concern raised by the consortium preference is the equal weighting of this criterion with other, more important criteria. Groups awarded points given for consortium participation might prevail over others who receive points that are more directly related to a licensee's potential to serve its community. In Section D(4) of these comments, Prometheus proposes a tiered "waterfall" system that would allow for unequal weighting of criteria. Another option would be to create a more stratified point system -- awarding ten points for local programming, for example.

d. The Commission Should Eliminate the Proposed Operating Hours Criterion.

Although not addressed in the *Fourth Further Notice*, Prometheus asks the Commission to eliminate the preference point given to LPFM stations who pledge to broadcast twelve hours each day. Prometheus has long proposed the elimination of this criterion⁹⁰. Thanks to computerized automation systems that have become commonplace in the years since the inception of the LPFM service, even one-person LPFM stations easily meet this standard. As compared with other selection criteria, proposed operations of 12 hours per day does not meaningfully distinguish among applicants.

The Commission's proposal to mandate time-sharing for stations which do not operate at minimum of 12 hours per day⁹¹ represents an implicit acknowledgement of this reality. The

⁹⁰ See Comments of Prometheus Radio Project in the Matter of Future of Media and Information Needs of Communities in a Digital Ages, GN Docket 10-25, p. 11. Filed June 8, 2010

⁹¹ *Fourth Further Notice* at ¶2

adoption of mandatory time-sharing for stations operating fewer than 12 hours per day would render the proposed operating hours criterion redundant and unnecessary.

3. To Better Allocate Scarce LPFM Licenses to the Best Potential Licensees, the Commission Should Develop Several Additional Selection Criteria.

In response to the *Fourth Further Notice*'s invitation to "comment on whether to develop additional selection criteria for the LPFM point system in order to limit the number of involuntary time-share licensing outcomes," ⁹²Prometheus urges the Commission to develop several additional selection criteria. Additional criteria would enable the Commission to reduce ties among LPFM applicants and increase community benefits. Prometheus suggests two new criteria that should be applied in the upcoming round of LPFM applications: a local news pledge and a modified main studio pledge. These criteria strongly indicate an applicant's potential to strengthen communities and further localism and diversity.

a. To Encourage LPFM Stations to Help Address the Decline in Local News, the Commission Should Adopt a Local News Pledge Criterion.

A key finding in the Commission's Information Needs of Communities was that local communities have fewer options for original local news reporting than in the past.⁹³ Newspaper, radio, and television news outlets have fewer reporters, and the Internet has not yet produced a model for funding local news reporting.⁹⁴ To encourage LPFM stations to help address the decline in local news, the Commission should award a preference to LPFM license applicants that pledge to produce at least two hours of local news each week.

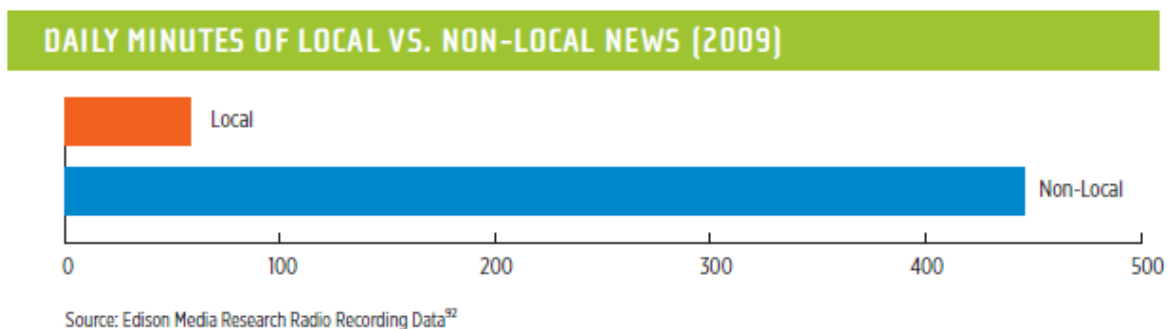
⁹² *Fourth Further Notice* at ¶64

⁹³ *INC Report* at 123

⁹⁴ *Id.*

The Commission’s report found that in the mid 1980s, there were 50 commercial all-news stations throughout the United States, but in 2010 there were only 30 all-news stations. Commercial all-news stations serve no more than 30 to 40 percent of the nation’s listeners. Similarly the Commission’s report found the number of reporters and the percent of locally-produced news has declined. The INC Report highlighted a particular impact on communities of color, “Black-oriented radio journalism in the nation’s capital has plummeted from 21 reporters at three stations 30 years ago to four reporters at two stations in 2003.”⁹⁵

Even the bright spots in local radio news—the news/talk stations—showed a dearth of local talk radio.⁹⁶ A report for the 2005 Localism Task Force found: “News/talk radio stations aired 67 minutes of local news and public affairs and 428 minutes of non-local news and public affairs every day.”



Source: Information Needs of Communities, p. 67.

While full power public radio has stepped up its efforts to offer news programming, “Only 15 percent of local public radio stations have three or more reporters, only 4 percent have

⁹⁵ *INC Report* at 64.

⁹⁶ *Id.* at 67

more than three editors.”⁹⁷ And public news radio, unfortunately, does not serve audiences of color well—a primary target of low power radio. For example, Station Resource Group’s Grow the Audience initiative cited numbers in which selected radio stations reach 12.7 percent of listening by college graduates generally (public radio’s strongest demographic) but reaches only 2.2 percent among Black college graduates and 5 percent for Hispanic graduates.⁹⁸

The loss of local news and information in radio has not been replaced by other sources of media. Although the Internet is a growing news source for many, original local news reporting on the Internet is not widespread. For example, the FCC’s report, *The Information Needs of Communities (INOC Report)*, found that in Baltimore, despite a “profusion of media outlets” including a number of locally-focused blogs and websites, “95 percent of the stories—including those in the new media—were based on reporting done by traditional media.”⁹⁹ In other words, the many online stories were all sourced from the same few legacy media outlets. Yet the number of reporters employed by these Baltimore newspapers and television stations had declined.

LPFM is well suited to help mitigate the decline in local news because of its inherently hyperlocal nature and strong ties to communities of service. LPFM stations often provide specialized news and information for populations underserved by other local media. For example, the *INOC Report* finds that “several LPFMs offer public affairs programs produced by and designed for senior citizens, a population with low digital access and adoption.”¹⁰⁰ Many

⁹⁷ INC Report at 67.

⁹⁸ Station Resource Group, Walrus Research, Corporation for Public Broadcasting, *Grow the Audience: Listening by Black and Hispanic College Graduates* (2008) at 9, available at: <http://www.srg.org/GTA/GTA%20Black%20Hispanic%20Report.pdf>

⁹⁹ INC Report at 16.

¹⁰⁰ *Id.* at 184.

LPFM stations offers news and informational programming in languages other than English, filling a gap in other public media.¹⁰¹

b. To Encourage LPFM Stations to Maintain a Meaningful Staff Presence, the Commission Should Adopt a Main Studio Pledge Criterion.

The Commission has explained that the local origination selection criterion was “intended to encourage licensees to *maintain production facilities and a meaningful staff presence within the community* served by the station.”¹⁰² Yet because of automation software universally used by LPFM and other broadcasters, the Commission’s hope that the local origination criterion alone would achieve these outcomes has not been realized. To prioritize those applicants most committed to remaining active in their communities of service and cognizant of their communities’ needs, the Commission should award a preference to applicants agreeing to maintain a studio in the community. The Commission can model such a preference by using an applicant evaluation criterion based on the “main studio rule.”¹⁰³

The Commission’s existing main studio rule requires television and radio broadcasters to “maintain a main studio at one of the following locations: (1) [w]ithin the station’s community of license; (2) [a]t any location within the principle community contour . . . ; or (3) [w]ithin twenty-five miles from the reference coordinates of the center of [the licensee’s] community of license[.]”¹⁰⁴ A main studio in that context must “be capable of originating and transmitting local

¹⁰¹ See Comments of Prometheus Radio Project in the Matter of Future of Media and Information Needs of Communities in a Digital Ages, GN Docket 10-25, filed June 8, 2010, at 2.

¹⁰² *Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6763, at ¶10 (2005) (emphasis added).

¹⁰³ 47 C.F.R. § 73.1125 (2012).

¹⁰⁴ 47 C.F.R. § 73.1125 (2012).

programming, and be staffed with a full-time manager and at least one other full-time employee or equivalents.”¹⁰⁵

A more flexible main studio definition is appropriate for the LPFM context, where most stations are run by volunteers. To meet the proposed main studio criterion, an LPFM main studio must be staffed at least twenty hours per week between the hours of seven a.m. and ten p.m. Staff may be either paid or unpaid, and staffing may alternate among individuals. This greater latitude in staffing is critical for volunteer-run LPFM stations. Volunteers may provide excellent service to the community and provide a valuable link between the station and listeners, yet few volunteers are available 20 hours each week.

The main studio should be the physical headquarters of the LPFM station and should be listed on the application as such (post office boxes, etc. should not be acceptable), along with a landline telephone number at which staff can be reached.

Adopting an evaluation criterion for adherence to a modified main studio rule would incentivize LPFM stations to maintain a physical studio and staff presence in the community, benefiting localism by increasing the likelihood of locally originated content and responsiveness to community needs.

¹⁰⁵ David M. Silverman & David N. Tobenkin, *The FCC's Main Studio Rule: Achieving Little for Localism at a Great Cost to Broadcasters*, 53 Fed. Comm. L.J. 469, 473 (2001); *see also* *Application for Review of Jones Eastern of the Outer Banks, Inc. Licensee, Radio Station WRSF(FM) Columbia, North Carolina*, Memorandum Opinion and Order, 6 FCC Rcd. 3615 (1991); *Petition for Reconsideration and/or Clarification of Jones Eastern of the Outer Banks, Inc. Licensee, Radio Station WRSF(FM) Columbia, North Carolina*, Memorandum Opinion and Order, 7 FCC Rcd. 6800 (1992).

4. To Better Select Among Mutually Exclusive Applicants, the Commission Could Adopt a “Waterfall” Criteria-Evaluation System.

In addition to developing several new selection criteria, Prometheus proposes a multi-stage “waterfall” evaluation process in which there are multiple opportunities for a single winner to emerge. By adopting this approach, the Commission can substantially decrease the number of LPFM time shares and successive licenses, enable LPFM licensees to better serve the public, and reduce the administrative complexity of mutually exclusive applications and large timeshare settlements.

In the waterfall system, each criterion would be worth a single point and would be placed—according to priority—into one of several tiers. The Commission would first compare applications using only the criteria in “Tier 1.” If, after relying only on the criteria in Tier 1, a single applicant receives more points than any of its competitors, that winning applicant becomes the tentative selectee. However, in the event of a tie between two or more applicants with the most points, those tied applicants would then advance to Tier 2. Applicants with fewer points would be dismissed. These procedures would then be repeated to evaluate the remaining applicants using Tier 2 and, if necessary, Tier 3 criteria.

One advantage of such a system is that the Commission can consider more factors while still retaining the importance of the “top priority” selection criteria. For example, if the Commission supports Prometheus’ view that local programming is central to the purpose of the LPFM service (but does not adopt a programming requirement as we urge), then the waterfall system would ensure that this criterion “trumps” any combination of other points.

To prioritize criteria into tiers, the Commission should place greatest emphasis on those criteria that most directly ensure that licensees produce local, diverse programming. Secondary

and tertiary tiers should include qualifications that are indicative, but not determinative, of an applicant's ability to provide local and diverse radio services.

If two or more applicants remain tied after being evaluated against one another in the waterfall process, any two or more of the tied applicants should be allowed to propose to share use of the frequency by submitting a time-share proposal in the manner specified under the Commission's current rules.¹⁰⁶ Prometheus suggests that, consistent with the current rules, where such proposals include all of the tied applications, all of the tied applicants should be treated as tentative selectees. However, in contrast to the current rules, if not all tied applicants are part of the same time-share proposal, the waterfall evaluation should be performed again, and time-share proponents' points should be aggregated at each tier of the waterfall process to determine the tentative selectees.

V. Conclusion

In sum, we support procedures to improve the application process, including simple second adjacent waiver standards and procedures that will aid underserved communities. We offer suggestions to impose minimum obligations on LPFM licensees to promote localism, and several options to improve the point system toward the same end. We offer several ideas to build on the Commission's new proposed classes of service.

We commend the Commission for its continued focus on localism and service to underserved communities. We request any and all relief as necessary to achieve these aims.

¹⁰⁶ 47 CFR § 73.872(c).

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